



FEDERAL COMMUNICATIONS COMMISSION

[MB Docket No. 21-401; FCC 21-1305; FR ID 55481]

Roger Wahl, Radio Station WQZS(FM), Meyersdale, PA

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document commences a hearing to determine whether, in light of recent criminal convictions, Roger Wahl is qualified to hold FCC authorizations, and as a consequence, whether his license for FM radio station WQZS, Meyersdale, PA should be revoked.

DATES: Persons desiring to participate as parties in the hearing shall file a petition for leave to intervene not later than **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

ADDRESSES: File documents with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, with a copy mailed to each party to the proceeding. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, “MB Docket No. 21-401.”

FOR FURTHER INFORMATION CONTACT: Albert Shuldiner, Media Bureau, (202) 418-2721.

SUPPLEMENTARY INFORMATION: This is a summary of the Hearing Designation Order and Order to Show Cause (Order), MB Docket No. 21-401, FCC DA 21-1305, adopted and released October 19, 2021. The full text of the Order is available online by using the search function for MB Docket No. 21-401 on the Commission’s ECFS web page at <http://apps.fcc.gov/ecfs/>.

Summary of the Hearing Designation Order

1. The Order commences a hearing proceeding before the Commission to determine whether certain criminal convictions render licensee, Roger Wahl (Wahl), unqualified to hold FCC

authorizations, and consequently, whether the license for WQZS(FM), Meyersdale, PA should be revoked under section 312(a)(2) and 312(c) of the Communications Act of 1934 (Act), 47 U.S.C. 312(a)(2) and 312(c). This revocation proceeding stems from Wahl's felony conviction and related misdemeanor convictions in 2020 under the Pennsylvania Crimes Code.

2. In determining whether a party is qualified to be a broadcast station licensee, the Commission considers factors specified in the Act, including character qualifications. Section 312(a)(2) of the Act, 47 U.S.C. 312(a)(2), provides that the Commission may revoke any license if conditions present would warrant refusal to grant a license or permit. Because the Commission considers character qualify in its review of broadcast applications, a character defect that would warrant the Commission's refusal to grant a license or permit would likewise support a Commission determination to revoke a license or permit.

3. Non-FCC misconduct may raise substantial and material questions of fact concerning the licensee's character. The Commission considers evidence of felony convictions because felonies are serious crimes and conviction provides an indication regarding an applicant's propensity to obey laws and conform to provisions of the Act, Rules, and Commission policies. The Commission retains discretion to consider other types of non-FCC misconduct that may be relevant, including misdemeanors.

4. On July 8, 2020, Wahl pleaded guilty to criminal use of a communication facility, which is a third-degree felony, and four related misdemeanors. Specifically, Wahl pleaded guilty to second-degree misdemeanors of recklessly endangering another person, unlawful dissemination of an intimate image, and tampering with evidence. He also initially pleaded guilty to invasion of privacy.

5. The facts supporting Wahl's guilty plea were recited for the court at the time his plea was entered, and Wahl himself confirmed that the recitation was accurate. Wahl had secretly taken nude photos of a woman inside her home using a concealed camera installed in her bathroom; (b) impersonated the woman on an online dating site; (c) sent the nude photos of the woman to

at least one man whom he connected with through that site; and (d) solicited that man to have sexual relationships with the woman without her consent. In addition, Wahl deleted the nude photos of the woman from his mobile phone, and deleted the communications he made via the online dating site upon learning of the Pennsylvania State Police investigation.

6. Subsequently, according to the record in the criminal proceeding, Wahl learned that a conviction on the invasion of privacy charge would require registration and notification as a sex offender. Thus, he withdrew his plea of guilty with respect to that charge, and on November 16, 2020, instead pleaded guilty to identity theft, a first-degree misdemeanor. At that time, Wahl was sentenced to concurrent sentences that effectively placed him on probation for three years, with four months of electronic monitoring, and required him to pay \$600 in fines and the costs of his prosecution and supervision.

7. Wahl's guilty plea to criminal use of a communication facility, a third-degree felony, by itself, raises the question under the Commission's *Character Qualifications Policy Statement* whether he possesses the requisite character qualifications to remain a Commission licensee. Reliability is a key element of character necessary to operate a broadcast station in the public interest. The propensity to comply with the law generally is relevant to character qualifications, and an applicant or licensee's willingness to violate other laws, and, in particular, to commit felonies, is indicative of whether the applicant or licensee will conform to the Commission's rules or policies. Evidence of any felony conviction is relevant to an applicant's or licensee's character.

8. Wahl's multiple misdemeanor convictions support the decision to designate this matter for hearing. While felony convictions, among all criminal convictions, are most relevant to our evaluation of an applicant's character, the Commission has the discretion to consider serious misdemeanor convictions in appropriate cases such as this. Although Wahl does not have a record of multiple criminal convictions over time, he pleaded guilty not only to a felony, but also to an array of misdemeanor criminal offenses (identity theft, unlawful dissemination of an

intimate image, recklessly endangering another person, and tampering with evidence) based on misconduct involving multiple actions over a period of time designed to harm his victim seriously and then evade responsibility for those actions. Even though Wahl's attempt to inflict physical harm on the victim failed, he did inflict substantial emotional harm. Furthermore, the fundamental purpose of the Commission's character inquiry is to make predictive judgments about an applicant's truthfulness and propensity to comply with the Act and the Rules. Wahl's misdemeanor convictions directly implicate his character qualifications.

9. The Commission recently supplemented its formal hearing processes applicable to the revocation of Title III licenses by adopting Rules that, *inter alia*, expand the use of a hearing procedure that relies in appropriate cases on written submissions and documentary evidence. These hearing proceedings are resolved on a written record consisting of affirmative case, responsive case, and reply case submissions, along with all associated evidence in the record, including stipulations and agreements of the parties and official notice of material facts. Based on that record, the presiding officer will issue an Initial Decision pursuant to section 409(a) of the Act, 47 U.S.C. 409(a), and sections 1.267 and 1.274(c) of the Rules, 47 CFR 1.267, 1.274(c). This is an appropriate case for use of those procedures because the criminal proceeding is a final adjudication and the court record from the proceeding contains an explanation of the factual underpinnings for Wahl's guilty pleas.

10. Should Wahl wish to avail himself of the opportunity to be heard, he (or his attorney) must file a written appearance pursuant to section 1.91(c) of the Rules, 47 CFR 1.91(c). The written appearance must be filed within 20 days of the mailing of this Order, and must state, among other things, that Wahl will present evidence on the matters specified in this Order.

11. After release of this Order, the presiding officer shall promptly release an Initial Case Order. The Initial Case Order shall put all parties on notice that they are expected to be fully cognizant of Part I of the Rules concerning Practice and Procedure, 47 CFR part 1, subparts A and B. The Initial Case Order shall also set a date for the initial status conference and a date by

which each party should file a pre-conference submission that would include (a) whether discovery is expected in this case, and if so, a proposed discovery schedule; (b) any preliminary motions they are intending to file; and (c) a proposed case schedule. The parties' pre-conference submissions should also indicate whether they request that a Protective Order be entered in this case.

12. The presiding officer shall set the case schedule, including any deadlines by which the parties should submit the motions they identified in their pre-conference submissions. The presiding officer shall also set the deadlines for the parties' affirmative case, responsive case, and reply case submissions in accordance with sections 1.371-1.375 of the Rules, 47 CFR 1.1371-1375. If the parties have requested the entrance of a Protective Order, the presiding officer shall also set a deadline by which a joint proposed Protective Order shall be submitted for consideration. In accordance with section 1.248(b) of the Rules, 47 CFR 1.248(b), the presiding officer may adopt the case schedule during the status conference or in an order following the conference.

13. In accordance with section 1.248 of the Rules, 47 CFR 1.248, and unless the parties agree otherwise, an official transcript of all case conferences will be made.

14. In accordance with section 1.246 of the Rules, 47 CFR 1.246, any party may serve upon any other party written requests for the admission of the genuineness of any relevant documents or of the truth of any relevant matters of fact. Such requests shall be served within twenty (20) days after the deadline for filing a notice of appearance unless the presiding officer sets a different time frame.

15. Sections 1.311 through 1.325 of the Rules, 47 CFR 1.311-325, set forth procedures that may be used for the discovery of relevant facts and/or for the production and preservation of evidence for use in the hearing proceeding. These sections of the Rules provide, *inter alia*, for the taking of depositions, for interrogatories, and for the production of documents and things.

16. Section 1.351 of the Rules, 47 CFR 1.351, sets forth the evidentiary standard for the hearing: “any oral or documentary evidence may be adduced, but the presiding officer shall exclude irrelevant, immaterial, or unduly repetitious evidence.” The parties may make evidentiary arguments based on the Federal Rules of Evidence.

17. Any person or entity seeking status as a party in this proceeding must file a petition to intervene or petition for leave to intervene in accordance with section 1.223 of the Rules, 47 CFR 1.223.

18. Motions to enlarge, change, or delete issues to be considered in this proceeding shall be allowed, consistent with section 1.229 of the Rules, 47 CFR 1.229.

19. This hearing proceeding is a “restricted” proceeding pursuant to section 1.1208 of the Rules, 47 CFR 1.1208, and thus *ex parte* presentations to or from Commission decision-making personnel, including the presiding officer and her staff and staff of the Commission’s Media Bureau, are prohibited, except as otherwise provided in the Rules.

20. All pleadings in this proceeding, including written submissions such as letters, discovery requests and objections and written responses thereto, excluding confidential and/or other protected material, must be filed in MB Docket No. 21-401 using ECFS. ECFS shall also act as the repository for records of actions taken in this proceeding, excluding confidential and/or other protected material, by the presiding officer and the Commission. Documents responsive to any party’s requests for production of documents should not be filed on ECFS. Such responsive documents shall be served directly on counsel for the party requesting the documents and produced either in hard copy or in electronic form (*e.g.*, hard drive, thumb drive) with files named in such a way as it is clear how the documents are organized.

21. The caption of any pleading filed in this proceeding, as well as all letters, documents, or other written submissions including discovery requests and objections and responses thereto, shall indicate whether it is to be acted upon by the Commission or the presiding officer. The presiding officer shall be identified by name.

22. Electronic service on the Enforcement Bureau shall be made using the following email address: EBHearings@fcc.gov.

23. To the extent any party to this proceeding wishes to submit materials or information that it would like withheld from the public record, it may do so in accordance with the procedures set forth in section 1.314 of the Rules, 47 CFR 1.314. The parties may also enter into a Protective Order initiated as described above.

24. The presiding officer shall issue an Initial Decision on the issues set forth herein, as well as any other issues designated for hearing in the course of the proceeding. This Initial Decision shall contain, at a minimum, findings of fact and conclusions of law, as well as the reasons or basis therefor, and the appropriate rule or order or policy and the sanction, relief or denial thereof, as appropriate.

25. *Accordingly, it is ordered* that, pursuant to sections 312(a)(2) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(2) and 312(c), and section 1.91(a) of the Commission's Rules, 47 CFR 1.91(a), and pursuant to authority delegated under section 0.283 of the Commission's Rules, 47 CFR 0.283, the captioned authorization *is designated for hearing* in a consolidated proceeding before the FCC Administrative Law Judge, at a time and place to be specified in a subsequent order, upon the following issues: (a) To determine the effects, if any, of Roger Wahl's felony conviction and related misdemeanor convictions on his qualifications to be a Commission licensee; (b) To determine whether Roger Wahl has the qualifications to be a Commission licensee; (c) To determine whether Roger Wahl's license for Station WQZS(FM) should be revoked.

26. *It is further ordered* that, pursuant to section 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(c), and section 1.91(c) of the Commission's Rules, 47 CFR 1.91(c), in order to avail himself of the opportunity to be heard and the right to present evidence at a hearing in these proceedings, Roger Wahl, in person or by his attorneys, *shall file* within 20 days of the mailing of this Hearing Designation Order, Order to Show Cause and Notice of

Opportunity for Hearing, a written appearance stating his intention to appear at the hearing and present evidence on the issues specified above.

27. *It is further ordered*, pursuant to sections 1.91 and 1.92 of the Commission's Rules, 47 CFR 1.91-92, that if Roger Wahl fails to file a written appearance within the time specified above, or has not filed prior to the expiration of that time a petition to accept, for good cause shown, such written appearance beyond expiration of said 20 days, the right to a hearing shall be deemed waived. Where a hearing is waived, the Administrative Law Judge shall issue an order terminating the hearing proceeding and certifying the case to the Commission.

28. *It is further ordered* that the Chief, Enforcement Bureau, *is made a party* to this proceeding without the need to file a written appearance.

29. *It is further ordered* that, in accordance with section 312(d) of the Communications Act of 1934, as amended, 47 U.S.C. 312(d), and section 1.91(d) of the Commission's Rules, 47 CFR 1.91(d), the burden of proceeding with the introduction of evidence and the burden of proof with respect to the issues at paragraph 25 *shall be* upon the Commission's Enforcement Bureau.

30. *It is further ordered* that a copy of each document filed in this proceeding subsequent to the date of adoption of this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing *shall be served* on the counsel of record appearing on behalf of the Chief, Enforcement Bureau. Parties may inquire as to the identity of such counsel by calling the Investigations & Hearings Division of the Enforcement Bureau at (202) 418-1420. Such service copy *shall be addressed* to the named counsel of record, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

31. *It is further ordered* that a copy of this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing shall be sent via Certified Mail, Return Receipt Requested, and by regular first-class mail to Roger Wahl, 128 Hunsrick Road, Meyersdale, PA 57424.

32. *It is further ordered* that the Secretary of the Commission shall cause to have this Hearing Designation Order, Order to Show Cause and Notice of Opportunity for Hearing, or a summary thereof published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION.

Thomas Horan,
Chief of Staff,
Media Bureau.

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